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Commissioner Jessica Rosenworcel, Federal Communications Commission
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Commissioner Brendan Carr, Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: MB Docket No. 17-179

Dear Sirs and Madames,

I write on behalf of Herndon-Reston Indivisible (“HRI”), a grassroots activist group of concerned citizens and viewers of Station WJLA-TV, Washington, D.C. in the Northern Virginia suburbs of Washington, who oppose the merger of Sinclair Broadcast Group and Tribune Media Company. As we have argued in an Informal Objection to the applications submitted by Sinclair and Tribune in Docket 17-179, on October 18, 2017, in meetings with your assistants (with the exception of Commissioner Carr, who denied us a meeting), the Media Bureau and the OGC’s Transaction Team, and *ex parte* notices regarding those meetings, Sinclair and Tribune have failed to demonstrate that grant of their applications would serve the public interest. On the contrary, Commission approval of this unprecedentedly sweeping merger, contemplating purchase of 40+ major market stations to enhance the existing stable of 170+ Sinclair TV stations across America (not to mention an additional approximate 60 “sidecar” stations), would be grossly anti-competitive and would flagrantly undermine the FCC’s core goals of localism and diversity (voice and program).

HRI has also raised another argument against the merger not fully covered in its Informal Objection but addressed in some detail in its meetings with Commission staff and follow-up correspondence. HRI has pointed out that, commencing in 2001, Sinclair has been found guilty of a historical pattern of misconduct, violating the Communications Act and the Commission’s rules. Sinclair has covered up these nefarious activities, rarely, if ever, “coming clean” but rather being found out by tips from third parties or investigations by the FCC’s staff. Sinclair

compounded these misdeeds by its ingenuous but predictable claims of owner/management ignorance. It has failed to explain how a huge broadcast conglomerate with decades of owner and managerial experience and legions of top-notch attorneys could repeatedly cross regulatory red lines with seeming ignorance of those violations. The inevitable conclusion is that Sinclair does not care about compliance, treating even large forfeitures and monetary obligations under orders to show cause as simply the cost of doing business. Sinclair is the epitome of a serial statutory and rule violator. There is therefore a substantial and material question whether Sinclair possesses the character qualifications to be a licensee of any broadcast station, much less 200 plus. Sinclair's merger must be designated for hearing before an FCC Administrative Law Judge to determine the answer to this question. After full examination of each instance of Sinclair's misconduct since 2001, in much the same manner RKO and its corporate parent, Goodyear Tire and Rubber in the 1970's and 80's, endured such hearings and ultimately lost their licenses, Sinclair must meet its burden to persuade the FCC it deserves the privilege of being a broadcast trustee.

Sinclair's sad saga begins with the \$160,000 in fines levied against it and its front Glencairn in 2001. These fines reflected unauthorized transfers of control of Glencairn's stations to Sinclair. The Commission's staff conducted an extensive investigation, compelling Sinclair and its front to divulge facts not apparent on paper. Later, the staff also investigated Glencairn's successor, Cunningham Broadcasting, owned by trusts in the Smith Brothers (Sinclair's owners)' names, with control ostensibly exercised by the Smith brothers' elderly mother. No action was taken against Cunningham, and it has gone on to purchase 17 stations, all in Sinclair markets, most or all the beneficiaries of sidecar deals with Sinclair. The most recent acquisition was in Dallas, late last year, where Tribune already has a station.

In 2007, Sinclair was fined \$36,000 after it aired programming on nine stations without disclosing to the public that the commentator, Armstrong Williams, had contracted with the Department of Education to promote the Department's "No Child Left Behind" program. Commentator Williams had close ties to Sinclair: providing financing for Armstrong to kick-started his television company and entering into one or more sidecar deals with him. During the past decade and a half, Sinclair has been fined at least eight other times for various violations totaling almost ten million dollars, including repeated transgressions of the important Children's Television Rules at least twelve stations.

Most notably until recently, in 2016, Sinclair settled an FCC investigation into alleged violations of Section 325 of the Act and news distortion, paying more than nine million dollars into the Treasury. *See* DA 16-856, released July 29, 2016. While the decree is short on details, it appears that Sinclair insisted on joint negotiations over retransmission consent fees, purporting to act on behalf of 36 sidecar stations technically not owned by Sinclair itself. This behavior, which occurred only three years ago, again demonstrated Sinclair's utter contempt for the Act and the FCC's rules and policies on retransmission consent, unauthorized transfer of control, and licensee candor.

Now, within the last month, the Commission has issued a 13.3-million-dollar forfeiture against Sinclair, the largest fine ever against any licensee for a violation of the Act and the FCC's regulations implementing the sponsorship ID requirements. *See* FCC 17-171, released December 21, 2017. Sinclair apparently ran over 1700 paid ads and "infomercials" for a hospital disguised as news programming for several months on more than 60 stations. Sinclair did not disclose the scheme; rather, as usual, an anonymous tipster notified the FCC. It is not clear what Sinclair's owners and managers knew about the scheme, but the sponsor apparently was kept in the dark, as were Sinclair sidecar licensees. The latter failure to inform other licensees who intended to air the programming violated another provision of the rules. This blatant flaunting of the FCC's sponsorship rules once more dovetails with Sinclair's consistent, insidious practice of blurring boundaries between local news, commentary, and commercials. The potential result of this deception is clearly to create confusion among listeners and facilitate propagandizing efforts by foreign governments and others, who would distort the news and electoral processes.

The predictive weight of Sinclair's pattern of misconduct is substantial. The Commission is legally bound to analyze this history and its likely effect going forward if Sinclair were allowed to add over 40 or more stations, many in major markets. Enabling Sinclair to use these key stations to enhance its power and reach and continue to trample on FCC rules and norms will not serve the public interest. The Commission must therefore cease coddling Sinclair with fines and admonitions as these sanctions have manifestly not worked. Rather, the Commission must focus on the heart of the matter: Should Sinclair be a licensee at all?

We also wish to address herein the arguments repeatedly made by Sinclair throughout this proceeding. The applicant urges that the Commission need not concern itself with Sinclair's stranglehold over local TV because Sinclair insists further consolidation would improve television ("Bigger is Better"). Sinclair further claims that the multiplicity of available non-broadcast voices in today's media ecosphere vitiates the need for structural ownership regulation by the FCC. These short-sighted, arguments defy logic and the fundamental principles of the Communications Act's blueprint for broadcast regulation, to ensure a diversity of voices and localism for a large public that remains dependent upon broadcast media.

The Sinclair-Tribune merger would put Sinclair in a commanding position of media and market influence by expanding its reach in excess of 70 percent of the U.S. broadcast television audience. What is not so often pointed out is that at least 12 of the next largest competitors to Sinclair have complied with the Congressional cap of 39 percent of national audience.¹ Many of these competitors, unlike Sinclair, reach the legislative cap through ownership of VHF stations in major markets. They could not take advantage of the FCC's arcane interpretation of the UHF discount to extend their reach if the existing cap continues to be honored. Furthermore, Sinclair has approximately 60 sidecar deals that do not count against the cap. Its management has publicly proclaimed that its business plan is to monopolize television broadcasting in each

¹ BIA Kelsey as of March 31, 2017.

television DMA. *See* Statement of Chris Ripley, Sinclair's CEO, to investors in 2017. Allowing the Sinclair merger to go forward would either place all of its broadcast competitors at a great market disadvantage or, if the 39 percent cap were lifted, lead to a wave of additional consolidation by Sinclair or by its competitors necessary for their survival. Neither of these outcomes serves the American public and their critical stake in being informed by a diversity of local news media.

Such loss of diversity, especially among local television broadcasters, would seriously violate the Congressional intent that motivated the Communications Act and the responsibility placed upon the FCC to ensure both a diversity of voices and localism for American broadcast television audiences. The continuing relevance of FCC protection of diversity and localism for broadcast television is underscored by findings from the PEW Research Center. After stating our findings based on the PEW research and the national Census, we will present our supporting analysis.

1. Comparing various sources implies that at least 40 million Americans (16 percent of the adult population) depend *exclusively* upon television stations for their news.
2. Comparing the three principal types of television news, that is, network, cable, and local, at least 55 million adults (22 percent of the American adult population) exclusively rely on *local television*. Remember, almost all local television news is originated by local broadcast stations since local cable news is primarily merely retransmission of a local station signals. Hence, a dominant position for Sinclair in local broadcast television would translate into a dominant position in all local television, cable retransmission included.
3. Newspapers, radio, and television are traditional sources that were well established at the time Congress amended communications legislation in 1996; hence, the only emergent source to change the competitive landscape is the variety of online offerings available today. Most of these online news offerings derive from links to traditional print media or television news. Also while the social media disseminate the greatest share of online news, social media avoids originating news themselves. The PEW research reveals that the public rightfully shows little confidence in online news, especially compared with their most trusted source, *local television*. Finally, according to the FCC's 2016 Broadband Progress Report, 34 million Americans (10 percent of the population) do not have access to broadband, and 23 million rural residents (39 percent of the rural population) also lack access to broadband services.² Although online sources are evolving rapidly, emergent sources have yet to reach the public or earn the public's trust while tens of millions have yet to participate in online offerings.
4. American adults aged 50 or older rely heavily on traditional sources for news, especially television, and few turn to online sources. At least 59 million among those in the television news audience (24 percent of the adult population) do not use online sources.

² <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2016-broadband-progress-report>

To reach these conclusions, we began with the 2016 PEW findings that were expressed in percentages of adult Americans 18 years old or older and employed the Census of U.S. population to convert those percentages into estimates of the number of Americans who would be affected.^{3 4}

Since 99 percent of all U.S. adults track one or another source of news, we can infer that at least 40 million adults (16 percent of the population) rely exclusively on television news. Table 1 shows that the largest possible coverage by all non-television sources leaves a residuum of 40 million adult news consumers (16 percent of the adult population) turning exclusively to television as their source.⁵

The *local television audience, direct broadcast and cable*, is much larger than cable or network news program audiences. Table 2 implies that only a 7 percent of viewers watch more than one type of television news. If all of those in the seven percent were also local news viewers, this would leave at least another 55 million adult television news viewers who rely exclusively on local TV. This large number is 39 percent of all TV news viewers and 22 percent of the U.S. adult population.

Examining which news sources the U.S. adult audience trusts further underscores the continuing importance of local broadcast television news. Table 3 shows that *nearly every respondent trusted local news sometimes or a lot* (82 percent of the audience) while by comparison relatively few trusted online sources (34 percent of the audience). More than five times as many adult consumers of news trusted local news “a lot” (22 percent) as did those who trusted online sources “a lot” (4 percent). These 2016 results might have been even more favorable toward online sources in comparison to what today’s responses might given the more recent revelation about the Russian manipulation of online media during the 2016 national campaign season.

³ These U.S. Census data were found in Fall of 2017 at:

<https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>

However, by January 2018, this URL no longer led to the same table. Comparing it with a similar table on the Census in January, produced a new forecast of population that does not alter the previous results by more than a few percent or a few million. These differences do not affect the main points of this analysis based on hundreds of million news media consumers and tens of millions supporting the smallest of our findings.

⁴ The percentages of adult Americans obtaining news from various media herein are derived by the PEW Research Center, “Pathways to the News”, found at: <http://www.journalism.org/2016/07/07/pathways-to-news/>.

⁵ We note that the round off percentages from PEW lead to some discrepancies in the rounded sums of audience size in millions, e.g., $249 - 210 = 39$ rather than the correct round off number of 40.

Table 1. Adult News Consumers by Source⁶

Source of News	Adult News Consumers	
	Percent	Millions
TV	57	142
Online	38	95
Radio	25	62
Newspapers	20	50
All Adults 18 or over	100	249
Max. Non-TV Audience*	84	210
Minimum Relying on TV Alone*	16	40

*One percent does not follow the news from any source.

Table 2. Breakdown of Television News Audience by Network, Cable, or Local Types

Type of TV News	Adult Audience	
	Percent	Millions
Network	30	43
Cable	31	44
Local	46	65
Total Audience	100	142
Total Exposure	107	152
View Multiple Types	7	10
Minimum Local News Audience	39	55

Table 3. U.S. Adult Audience Trust in the News Sources

Trust of News Sources	Percent		
	A Lot	Some	Some or More
Local News	22	60	82
National News	18	59	78
Family & Friends	14	63	77
Social Media	4	30	34

Comparing news source behavior for different age groups as shown in Figure 4, as one might expect, those younger than 50 chose online sources more than television, and *vice versa*. The bottom row of Figure 4 data also shows that even if all of the online audience were counted as television viewers as well, then there would still remain 65 percent of television viewers 65 and older who do not use online sources, and 43 percent of television viewers between the ages of 50 and 64 who do not use online sources. Converting these percentages to the corresponding

numbers of U.S. adults in 2016, Table 5 shows that 32 million over 65 and 27 million between 50 and 64 obtain their news from television but not from online sources. Thus, *59 million Americans still choose television and shy away from online sources.*

Table 4. Percentage of Adults Receiving News from Various Sources

News Source	Age Ranges			
	65+	50-64	30-49	18-29
TV	85	72	45	27
Online	20	29	49	50
Radio	24	29	27	14
Newspapers	48	23	10	5
TV but not Online	65	43	na	na

Table 5. Number of Adults Receiving News from Various Sources (millions)

News Sources	Age Ranges			
	65+	50-64	30-49	18-29
TV	42	46	37	15
Online	10	18	41	27
Radio	12	18	22	8
Newspapers	24	15	8	3
Number of Adults	49	63	83	54
TV but not Online	32	27	na	na

All of these separate findings have one theme in common: tens of millions of adult Americans still depend upon local television news, and nearly as many depend exclusively upon television news. Moreover, adult American audiences trust their local television news more than other sources, especially in comparison to online sources, by a large margin. While the typical television viewer might be older than the typical online news recipient, the transition point at 50 years of age suggests that reliance on local television news will persist for a significant time into the future. For all these reasons, the FCC continues to have a responsibility to demand from its licensees diversity and localism as they impact on broadcast television news. The Commission should therefore block the excessive consolidation and monopolization that would inevitably result from a Sinclair-Tribune merger by denying its consent to the instant proposed transaction, or at the very least, designating the Sinclair and Tribune applications for hearing.

Respectfully submitted,

Herndon-Reston Indivisible

January ~~23~~, 2018

By: 

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